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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,131	02/16/2001	Victor P. Crome	91328.098503US3	8008
23469	7590	10/23/2006		
JAECKLE FLEISCHMANN & MUGEL, LLP				
190 Linden Oaks				
ROCHESTER, NY 14625-2812				
			EXAMINER	
			BELL, BRUCE F	
			ART UNIT	PAPER NUMBER
			1746	

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/784,131

Applicant(s)

CROME, VICTOR P.

Examiner

Bruce F. Bell

Art Unit

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/16/01</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a series connection being made between the electrode surface of the tube and that of the electrode surface of the next tube and a parallel connection between the electrode surface of a tube in one row with an electrode surface of a tube in another row, does not reasonably provide enablement for a first electrode connectable to a source of electrical potential at a first polarity and a second electrode being connectable to a source of electrical potential at a second polarity. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

3. Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1-16 while being enabling for a series connection being made between the electrode surface of the tube and that of the electrode surface of the next tube and a parallel connection between the electrode

surface of a tube in one row with an electrode surface of a tube in another row, does not reasonably provide enablement for a first electrode connectable to a source of electrical potential at a first polarity and a second electrode being connectable to a source of electrical potential at a second polarity. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

Oath/Declaration

Applicants have support in the original claims for the polarity connections and therefore may insert any of the original claim language into the specification to give support for this aspect of the instant invention.

4. The reissue oath/declaration filed with this application is defective because it fails to contain the statement required under 37 CFR 1.175(a)(1) as to applicant's belief that the original patent is wholly or partly inoperative or invalid. See 37 CFR 1.175(a)(1) and see MPEP § 1414. The statement regarding applicants duty to disclose information states "information ... which is material to the examination of this application". This is not sufficient in that the rule requires the disclosure of information which is material to patentability. See MPEP 1414 and 37 CFR 1.63(b)(3). Additionally, applicants statement of inoperability is insufficient. Applicants merely state that claims 1 and 6 were claimed incorrectly. MPEP 1414 states:

Reissue oaths or declarations must contain the following:

(A) A statement that the applicant believes the original patent to be wholly or partly inoperative or invalid -

(1) by reason of a defective specification or drawing, or

(2) by reason of the patentee claiming more or less than patentee had the right to claim in the patent;

5. Claims 1-16 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Specification

Applicants have submitted a new specification on September 21, 2005. It is not the same as the originally filed specification which had additions and deletions. Applicant may resolve the discrepancies in response to the office action. Any amendments to the specification should follow rule 1.173(b)(1).

Claim Objections

6. The format of the added claims is not in the proper format, in that all newly added claims should be underlined in their entirety. Applicants are requested to submit a properly marked up version of their claims in response to this office action. See 37 CFR 1.173(b)(2).

Allowable Subject Matter

7. Claims 1-16 are allowable over the prior art of record and would be allowable once the 35 USC 112, first paragraph rejection is overcome.


8. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach and/or suggest an ionically conductive ceramic element and an oxygen generator containing such ceramic element wherein the ceramic elements are connected as set forth in the instant claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce F. Bell whose telephone number is 571-272-1296. The examiner can normally be reached on Monday-Friday 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BFB
June 26, 2006


Bruce F. Bell
Primary Examiner
Art Unit 1746